

REMARKS

Claims 1-4 are in this application. Claims 1-4 have been canceled without prejudice to further prosecution in another application. Claims 5-8 have been added and are now pending and under examination.

This Preliminary Amendment is submitted in order to claim a non-elected invention from the parent application Serial No. 09/301,217.

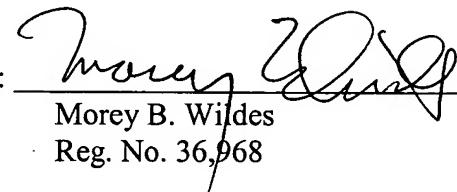
In an Office Action dated August 15, 2001 in parent application Serial No. 09/301,217, the Examiner indicated that claims 1-4 were restricted under 35 U.S.C. § 121 to one of the following five groups of inventions: (I) Claims 1-4, drawn to transgenic plants containing a gene that encodes SEQ ID NO: 2, (II) Claims 1-4, drawn to transgenic plants containing a gene that encodes SEQ ID NO: 4, (III) Claims 1-4, drawn to transgenic plants containing a gene that encodes SEQ ID NO: 6; (IV) Claims 1-4, drawn to transgenic plants containing a gene that encodes SEQ ID NO: 8; and (V) Claims 1-4, drawn to transgenic plants containing a gene that encodes SEQ ID NO: 10. In response, Applicants elected Group I, consisting of claims 1-4, drawn to transgenic plants containing a gene that encodes SEQ ID NO: 2, for prosecution in that application.

Now, in this divisional application, Applicants elect Group IV consisting of claims 1-4 drawn to transgenic plants containing a gene that encodes SEQ ID NO: 8 for prosecution in this divisional application. Applicants have added new claims 5-8 in place of claims 1-4, and claims 5-8 are directed solely to this subject matter and are in the form approved by the Examiner in parent U.S Patent Application No. 09/301,217.

Applicants believe that all claims are in condition for allowance. In the event that the Examiner determines that the application is not in condition for allowance, Applicants respectfully request the Examiner to contact the undersigned for a telephone interview before an Office Action is issued in the application.

A favorable action on the merits is earnestly solicited.

Respectfully Submitted,
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